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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,560	05/15/2001	Hans Berger	66376-252-7	8137
25269	7590	07/13/2006	EXAMINER	
DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005			LANEAU, RONALD	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,560

Applicant(s)

BERGER ET AL.

Examiner

Ronald Laneau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 and 31 is/are allowed.
- 6) ☒ Claim(s) 19-30 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Amendment

1. The response filed on 4/24/06 has been entered. Claims 1-32 remain pending in this application.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 19, 20 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199).

As per claims 27, Lobiondo discloses an analyzer or analyzing system for applications in medical, environmental or food technology, wherein said analyzer or analyzing system is provided with a connection for remote data transmission, for the purpose of automated transmission of data on product ordering, service and maintenance, and is configured as an internet portal for information, especially information on products, Software, Service, maintenance, and use, in the fields of medical, environmental or food technology.

29. An analyzing system according to claim 27, wherein said analyzer or analyzing system is provided with a data link to a laboratory information system LIS, a hospital information system HIS and further laboratory systems.

30. An analyzing system according to claim 29, wherein said data transfer is effected by means of wireless technology in the 2.4 GHZ range, utilizing a license-free ISM band.

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As per claims 19, 20 and 32, Lobiondo discloses an analyzer or analyzing system for determining a parameter or a parameter group of a sample, being used in medical, environmental or food technology, comprising a device for recording said types and maximum useful lives of said required operating materials, and said types, expiry dates and quantities of said required supplies (col. 3, lines 51-58, col. 4, lines 39-49), including a device for calculating an estimated frequency of use of said analyzer or a device for entering a desired frequency of analysis (see fig. 3, projected usage), and said analyzer includes a device for calculating said operating materials and/or supplies required per unit of time, in dependence on said data on operating materials and supplies (col. 3, line 67 to col. 4, line 4) and said frequency of analysis and said analyzer is further provided with a connection for remote data transmission for purposes of automated transmission of data concerning product ordering, service and maintenance (col. 3, lines 16-31). Lobiondo does not explicitly disclose an automatic recording, automatically calculating a frequency but it is well settled that it is not "invention" to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result. In re Rundell, 18 CCPA 1290, 48 F. 2d 958, 9 USPQ 220.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an automatic means for something mechanical or manual because it would provide a faster approach of determining the expiry date and quantities of sample up for replacement.

4. Claim 21-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobiondo et al (US 5,305,199) in view of Sano et al (US 5,415,840).

As per claims 21-30, Lobiondo et al further teach updating information on product using a software, expected delivery and shipment information that can be transmitted via a link (col. 3, lines 20-24 and 42-46).

Lobiondo et al do not teach an analyzing system for determining medical sample parameters but Sano et al teach a system for determining medical sample wherein said connection for remote data transmission is provided in a computer central unit of said analyzing system (fig. 1), the analyzer is coupled to the central unit as claimed and can be removed to be inserted in a different position.(col. 4, lines 42-48), said analyzing system is capable of being provided with a sample bus to exchange the samples to be tested between the analyzer and the control unit (col. 4, lines 1-13).

Neither Lobiondo et al nor Sano et al expressly teach exchanging washing, calibrating and quality control media between analyzer and the control unit but this feature is obvious in the medical field because the system as taught by Sano et al intrinsically would have to do at least some washing, calibrating and quality control media in order to have any kind of exchange between these two elements and also to ensure the reliability of the equipment in use to perform a certain test.

It would have been obvious to one of ordinary skill in the art to utilize the automatic analyzer as taught by Sano et al into the system of Lobiondo et al because it would enable measurement to be performed with simple mechanisms and good reproducibility.

Allowable Subject Matter

5. Claims 1-18, 31 and 32 are allowed.

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The following is a statement of reasons for the indication of allowable subject matter: None of the references, either singularly or in combination, discloses the totality of combined elements recited in the claims such as:

As per claims 1-18, automatically calculating an amount of said operating materials and/or supplies required per unit of time, based on data obtained in steps (a) and (b); determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the maximum useful lives of said required operating materials, the expiry dates and quantities of said required supplies, and automatically ordering said operating materials and/or supplies via remote data transmission.

As per claim 31, automatically calculating an amount of said operating materials and/or supplies required per unit of time, based on data obtained in steps (a) and (b); determining an optimum point in time for ordering more of said required operating materials and/or supplies, taking into account the maximum useful lives of said required operating materials, the expiry dates and quantities of said required supplies, and automatically ordering said operating materials and/or supplies via remote data transmission, where the ordering is proposed by the analyzer and confirmed by a user, or is effected fully automatically by the analyzer after a corresponding function has been activated once.

As per claim 32, a device for automatic recording type and maximum useful life of operating materials used, and of types, expiry dates and quantities of supplies used, including a device for automatically calculating an estimated frequency of analysis from past frequencies of use of said analyzer, or a device for entering a desired frequency of analysis, and said analyzer includes a device for calculating said operating materials and supplies required per unit of time

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in dependence on said data on operating materials and supplies and said frequency of analysis, and said analyzer if further provided with a connection for remote data transmission for purposes of automated transmission of data concerning product ordering, service and maintenance.

Response to Arguments

6. Applicant's arguments filed on 4/24/06 have been fully considered but they are not persuasive.

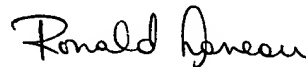
Applicant's arguments have been fully considered and as a result, the Examiner indicates some allowable subject matter. As for Applicant's other arguments, they are not persuasive and the rest of the claims remain rejected over Lobiondo in view of Sano. When calculating a projected usage, all things are taken into account including the frequency of analysis of the analyzer and in a sense, Lobiondo does disclose such elements of the claim.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald Laneau whose telephone number is (571) 272-6784. The examiner can normally be reached on 5:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ronald Laneau
Primary Examiner
Art Unit 3627

7/8/06

rl